

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Charles Tyrone Cason,

Plaintiff

V.

Southern Desert Correctional Center, et al.,

Defendants

Case No.: 2:18-cv-001419-JAD-NJK

Order Adopting Report and Recommendation and Dismissing and Closing Case

[ECF No. 11]

On July 22, 2019, the court ordered service to be accomplished on lone Defendant

¹Worthey, but the record contains no indication of successful service.² So, on February 24,

12 2020, the court ordered plaintiff to show cause, by March 16, 2020, why this case should not be

¹³ dismissed for lack of service.³ Plaintiff filed nothing, so on April 13, 2020, the magistrate judge

14 recommended that this case be dismissed under Federal Rule of Civil Procedure 4(m) for lack of

15 service. The deadline for objections to that report and recommendation passed without objection

16 or a request to extend the deadline to file one. “[N]o review is required of a magistrate judge’s

1 / report and recommendation unless objections are filed.” Having reviewed the R&R, I find good

18 cause to adopt it, and I do.

1 ECF No. 7.

² See ECF No. 9 (summons returned unexecuted).

³ ECF No. 10.

²² ²³ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

1 FRCP 4(m) requires service of the summons and complaint to be completed within 90
 2 days of the complaint's filing, and “[i]f a defendant is not served within 90 days after the
 3 complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss
 4 the action without prejudice against that defendant or order that service be made within a
 5 specified time.”⁵ Rule 4(c)(1) further makes it clear that “[t]he plaintiff is responsible for having
 6 the summons and complaint served within the time allowed under Rule 4(m).”⁶

7 District courts have the inherent power to control their dockets and “[i]n the exercise of
 8 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁷ A
 9 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a
 10 court order, or failure to comply with local rules.⁸ In determining whether to dismiss an action
 11 on one of these grounds, the court must consider: (1) the public’s interest in expeditious
 12 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
 13 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
 14 availability of less drastic alternatives.⁹

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 17⁵ Fed. R. Civ. Proc. 4(m).

18⁶ Fed. R. Civ. Proc. 4(c).

19⁷ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

20⁸ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
 21 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
 22 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
 23 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

⁹ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
Ferdik, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

The first two factors, the public’s interest in expeditiously resolving this litigation and the court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an action.¹⁰ A court’s warning to a party that its failure to obey the court’s order will result in dismissal satisfies the fifth factor’s “consideration of alternatives” requirement,¹¹ and that warning was given here. The fourth factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

Because plaintiff has not demonstrated that process has been served within the time
prescribed by FRCP 4(m),

12 IT IS THEREFORE ORDERED that the Report and Recommendation [ECF No.
13 11] is ADOPTED in full, and this case is DISMISSED without prejudice under FRCP 4(m).

14 IT IS FURTHER ORDERED that the Clerk of Court is directed to CLOSE THIS
15 CASE.

16 Dated: April 30, 2020

U.S. District Judge Jennifer A. Dorsey

²³ ¹⁰ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

¹¹ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.